HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMB No. 696/05
Rickshaw Puller
Vs
Nagar Palika Parishad
& others

Approved for reporting.

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Not approved for reporting

Date of decision 25.4.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 696 (MB) OF 2005

Rickshaw Puller Welfare Society, Pichari Bazar, Tallital, Nainital, through its Secretary. .....Petitioner.

Versus

1. Nagar Palika Praishad, Nainital, through its Executive Officer.
2. Executive Officer, Nagar Palika Parishad, Nainital.
3. Chairperson, Nagar Palika Parisahd, Nainital.
4. Rickshaw Owners Society, through its Secretary, Rickshaw stand, Mallital, Nainital.

.....Respondents.

Dated: 25.04.2006

Hon'ble Rajesh Tandon, J.

Heard Sri A. Rab, Advocate for the petitioner as well as Shri D.S.Patni, Advocate for the respondents no.1 to 3 and Sri Sharad Sharma, Advocate for the respondent no. 4.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents no. 1, 2 and 3 to cancel all licenses granted to the rickshaw owners and the joint-licenses. Further prayer has also been made for a writ of mandamus directing the respondents no. 1, 2 and 3 to issue license only to the actual rickshaw pullers in accordance with the byelaw number 2(a) dated 22nd January, 1942 (Annexure No.4 to the writ petition) and not to issue any joint licence and also not to transfer the driving licence in the name of any rickshaw owner who is not actually driving/pulling the rickshaw.

Briefly stated, according to the case of the petitioner, he is a registered Society under the name and style of Rickshaw Puller Welfare Society, duly registered with the Registrar, Society Registration, Uttaranchal as No. 92 of 2005-06 on 13th May, 2005 and was thereby issued the certificate No. 391.

The grievance of the petitioner is that he is the union of owner of rickshaws, who themselves pull rickshaw, but the Nagar Palika Parishad confiscated the said rickshaws and are still in its unauthorized possession. In spite of the repeated requests the Nagar Palika Parishad did not permit the petitioner Society to ply the rickshaws.

Petitioner has submitted that members of the society individually and collectively have been demanding their right through various representations which include representation to His Excellency, Governor of Uttar Pradesh and the members of Parliament, but till now nothing has been done in their favour.

The petitioner has submitted that there are by laws for the regulation of three wheeler pedal propelling richshaws plying for hire within the Nainital Muncipality, where relevant Rule (2) (a) provides as under:-

"2. (a) A person desirous of having a driver's licence shall submit an application, in duplicate to Licensing Officer giving full and correct particulars as may be asked for the Licensing Officer, and produce a medical certificate, issued by the Municipal Medical Officer of Health, Nainital as to his age, phyeal fitness and identification markes and three '1X3' prints of his photographs with his application or subsequently according to the directions of the Licensing Officer. A licence for driving under these bye-laws shall be issued only to the person actually driving the cycle rickshaw on furnishing a security of Rs. 10. The driving licence fee will

be Rs. 5 per year or part of a year ending on a March 31, in the year and the licence will be non-transferable.

3. No licence shall be issued or renewed unless the police authorities have verified the character and antecedents of the person applying for a licence. In case of adverse police report, no licence will be granted or such licence if granted will be cancelled.

5. The licensing officer shall refuse to grant a licence if the vehicle is not in a good state of repair no minor shall be issued a licence nor shall any person be issued mor than one Cycle Rickshaw licence in his name.

7.(vii) The licensee shall not transfer his licence to any other person but a licence may be transferred on the joint application of the persons concerned to the licensing officer, who will make the necessary alternation in the license on payment of a fee of Rs. 2.50. P. The alterations in the licence shall be signed and dated by licensing officer."

Petitioner has also referred the judgment passed in ***Man Singh and others V. State of Pujab AIR 1985 Supreme Court 1337,*** where it has been observed as under:-

"It *cannot be held that the Punjab Cycle Rickshaws (Regulation of Licence) Act of 1976 is ultra vires Arts. 14, 16, 19 (1) and that the scheme propounded by Supreme Court in AIR 1981 SC 14 is unworkable and ineffective. Given appropriate compliance the scheme will provide adequate relief to the rickshaw pullers and constitute an effective Supplementary Code fulfilling the object of the Punjab Act. The scheme propounded by the Supreme Curt as aforesaid was intended to be " a self-working, specific scheme which makes the statutory ban not a negative, self-defeating*

interdict, but a positive economic manumission". The aforesaid legislation cannot be regarded as an unreasonable restriction on the fundamental rights of the rickshaw pullers, under Art. 21 read with sub-cl. (g) of cl.(1) of Art. 19 of the Constitution. No can it be said it is violative of Arts. 14 and 16 of the Constitution. There can be no comparison between rickshaw pullers and those who carried on the occupation of plying other vehicles, such as taxi-cabs, on hire, The pathetic conditions in which rickshaw pullers pursue their burdensome vocation places them in a class apart from others in their right to ameliorate and protective treatment from the state."

"We think it desirable that the Municipal Corporation should determine the maximum number of license which should be granted for plying cycle rickshaws within its jurisdictional limits, keeping in mind the needs of the travelling public on the one hand and the danger of uneconomic plying on the other. Every rickshaw puller proposing to take advantage of the scheme should apply to the Municipal Commissioner for a certificate, the period within which such applications may be filed being notified by the Municipal Corporation from time to time as the need arises. All the applications will be considered, in the serial order in which they are received, for the grant of a certificate on the basis of which the rickshaw puller may take further steps envisages in the scheme for the grant of financial assistance enabling him to purchase a cycle rickshaw for plying by him. The issue of such certificate shall be subject to the following conditions:

1. Each certificate shall be granted in respect of one cycle rickshaw only.

2. The number of certificates issued shall not exceed the maximum, if any, fixed by the Municipal Corporation as the total strength of the cycle rickshaws allowed to ply within its jurisdictional limits.

3. No person shall be granted more than one such certificate.

4. Preference shall be given in the matter of granting certificates to those rickshaw puller who have plied a cycle rickshaw for one year before the Punjab Act came into force."

Petitioner has further referred the judgment of ***All. Delhi C.R.O. Union Vs. Delhi Municipal Corpn. AIR 1987 SC 648***, where it has been observed as under:-

"5. It is clear from the above order that this Court did not say anything about the constitutional validity of bye-law No. 3. We, however, find on a consideration of the language of clause (5) in section 481 DL of the Act that the bye-law falls within the scope of the power conferred on the Corporation ot frame bye-laws for the issue of licences in respect of cycle-rickshaws which are kept or used for plying in the Delhi Municipal Corporation area. While framing bye-laws under the above statutory provision it is permissible for the Corporation to restrict the issue of license only to the owners of the rickshaws who themselves act as rickshaw pullers."

The Hon'ble Apex Court in the case of ***Kapila Hingdorani Vs. State of Bihar 2003(7) AIC18 (SC) 194*** has emphasized for improving the methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, wherein paragraph 50 of the judgement, the term "life" has been defined relying upon the judgement of Field, J. in Munn V. Illinois reported in 1877 (94) US 1131, as under:

"Paragraph – 50: The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facets thereof. 'Life', as observed by Filed, J. in Munn V. Illinois [1877(94)US 1131] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and facilities by which life is enjoined. [See Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others [1983(1) SCC 124] and Olga Tellis and others Vs Bombay Municipal Corporation and others [1985(3) SCC 545].

In view of the above, the respondents are directed to consider the guidelines mentioned in the bye-laws while for giving the licence to the petitioner.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

25.04.2006

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